

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FILED

JUN 14 2002

ROBERT D. BROWN, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
DEPUTY

IN RE: PLAN OF THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF OKLAHOMA
FOR THE IMPLEMENTATION OF THE CRIMINAL
JUSTICE ACT, TITLE 18, UNITED STATES CODE, § 3006A

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G.O. 02-1

GENERAL ORDER REGARDING THE PLAN OF THE
UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF OKLAHOMA FOR THE IMPLEMENTATION
OF THE CRIMINAL JUSTICE ACT, TITLE 18,
UNITED STATES CODE, § 3006A

(A) Applicability

(1) Pursuant to the provisions of the Criminal Justice Act, revised in 1984, Title 18, United States Code, §§ 3006A, *et seq.* [hereinafter "the Act"], the Judges of the United States District Court for the Western District of Oklahoma adopt the following amended Plan for the representation of any person financially unable to obtain adequate representation:

- (a) who is charged with a felony, a Class A misdemeanor or an act of juvenile delinquency defined in 18 U.S.C. § 5031; or
- (b) who is charged with a violation of probation; or
- (c) who is under arrest, when such representation is required by law; or
- (d) who is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release; or
- (e) who is subject to a mental condition hearing pursuant Chapter 313 of Title 18, United States Code; or
- (f) who is in custody as a material witness; or
- (g) for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he or she faces loss of liberty, any federal law requires the appointment of counsel; or

- (h) who is entitled to appointment of counsel in parole proceedings; or
- (i) who is the target of criminal charges, a grand jury witness, or eligible for pretrial diversion; or
- (j) who is entitled to appointment of counsel in verification of consent proceedings to transfer an offender to or from the United States for the execution of a penal sentence under Title 18, United States Code, § 4109; or
- (k) who is seeking to set aside or vacate a sentence of death under Title 28, United States Code, §§ 2254 or 2255.

(2) Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

(B) Provision for Furnishing Counsel.

(1) This Plan provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender, and serving the United States District Court for the Western District of Oklahoma. In addition, this Plan provides for the appointment and compensation of private counsel in a substantial proportion of cases. The term "private counsel" includes counsel furnished by a bar association or a legal aid agency, and a claim by such an organization for compensation will be approved on the same basis as in the case of the appointment of private counsel.

(2) The determination of whether a party entitled to representation will be represented by the Organization or by private counsel is within the discretion of the Court.

(3) Counsel shall be provided to eligible persons as soon as feasible. Appointments shall occur as soon as the person is taken into custody, upon formal charge, upon notice of the filing of charges if the charging document remains sealed, upon notice the person is the target of criminal investigation, upon appearance before a United States

Magistrate or District Judge, or when a Judge otherwise considers appointment of counsel appropriate under the Criminal Justice Act, whichever occurs earliest.

(C) **Federal Public Defender Organization.**

(1) The Court has determined that the use of a Federal Public Defender Organization, as defined in subsection (g)(2)(A) of the Act, serving this district will facilitate the representation of persons entitled to the appointment of counsel under the Act, and that the Western District of Oklahoma is one in which at least 200 persons annually require the appointment of counsel, as required by subsection (g)(1) of the Act, concerning the qualifications necessary to establish such an organization. A Federal Public Defender Organization with offices in Oklahoma City, Oklahoma, has been properly established.

(2) The Organization shall operate pursuant to the provisions of subsection (g)(2)(A) of the Act, as well as the *Guidelines for the Administration of the Criminal Justice Act*, promulgated by the United States Judicial Conference pursuant to subsection (h) of the Act.

(3) Neither the Federal Public Defender nor any appointed staff attorney may engage in the private practice of law.

(4) The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the Organization's activities, its financial position and proposed budget.

(5) The Federal Public Defender shall furnish to this Court the initial roster of staff attorneys and shall report any changes thereto to this Court.

(6) In order to ensure the effective supervision and management of the Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in the Federal Public Defender office. Accordingly, the Court will assign cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.

(7) The Organization will make such arrangements with federal, state, and local investigative and police agencies as will adequately assure that at the earliest practicable stage persons arrested under circumstances where such representation is required by federal law may promptly have counsel furnished them by the Organization.

(8) In order to ensure availability of counsel and other resources, the Federal Public Defender shall monitor capital litigation in the State of Oklahoma and shall report to the Judges of the three federal districts as necessary to apprise the courts of reasonably anticipated program needs and resource requirements. The Federal Public Defender shall report this information to the Capital Habeas Corpus Panel Selection Committee as necessary to aid the Panel Selection Committee in its efforts.

(D) **Criminal Justice Act Panel of Private Attorneys.**

(1) **Composition of Panel of Private Attorneys.**

(a) **Approval.** The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to provide representation under the Act. The Court shall approve attorneys for membership on the Panel after receiving recommendations from the "Panel Selection Committee" established pursuant this section. Members of the CJA Panel shall serve at the pleasure of the Court.

(b) **Size.** The Court shall fix, periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the Criminal Justice Act caseload, yet small enough so that Panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

(c) **Eligibility.** Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and

the Sentencing Guidelines. To be eligible for appointment in federal capital prosecutions, counsel must meet the criteria enumerated in section (F)(6) of this Plan.

(d) Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Public Defender. Completed applications shall be submitted to the Federal Public Defender, who will transmit the applications to the chairperson of the Panel Selection Committee. The Federal Public Defender shall provide the Chief Judge with a copy of the Panel applications for circulation among the Judges for review and comment. The Federal Public Defender shall communicate the comments of the Judges to the Panel Selection Committee.

(e) Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, gender, age, national origin, or disabling condition.

(2) Panel Selection Committee.

(a) Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one United States Magistrate Judge, one attorney who is a member of the CJA Panel, and one attorney who is not a member of the CJA panel. The Panel Selection Committee members shall serve five year terms, staggered to permit continuity of membership. The Federal Public Defender shall serve as a non-voting member of the Panel Selection Committee. The Federal Public Defender shall suggest the names of attorneys willing to serve on the CJA Panel Selection Committee to the Chief Judge. The Committee shall select its own chair.

(b) Duties.

(i) The Panel Selection Committee shall meet at least once a year to consider applications. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to provide representation. The Committee shall report to the Court regarding recruitment efforts

undertaken by the Committee in furtherance of the Equal Opportunity statement contained in (D)(1)(e) of the Plan.

(ii) Periodically, the Committee shall review the operation and administration of the Panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and Panel management.

(iii) The Committee shall inquire annually as to the continued availability and willingness of each Panel member to accept appointments.

(iv) If, at any time during the course of a year, the number of vacancies due to resignation, removal, or incapacity significantly decreases the size of the Panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

(v) The Federal Public Defender shall prepare an annual report of the Panel activity during the preceding fiscal year. The report shall reflect the number of times each attorney was contacted for an appointment, the number of appointments accepted, and the reason for the appointments refused. The annual report shall reflect the efforts undertaken during the year to encourage diversity of the Panel's composition. If a CJA Panel member resigns, the Federal Public Defender shall inquire regarding the reasons for that resignation and include those reasons in the annual report. The annual report shall be provided to the Chief Judge for review and comment. The Panel Selection Committee shall determine if action is required regarding any of the Panel members.

(3) CJA Training Panel.

(a) The Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned by the Court to assist members of the CJA Panel in a "second chair" capacity.

(b) Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members.

(c) Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

(d) The Training Panel member shall advise the Federal Public Defender of his or her completion of the training requirements. The Panel Selection Committee shall be polled for approval of the Training Panel member's admission to the regular CJA Panel.

(E) **Selection for Appointment.**

(1) **Maintenance of List and Distribution of Appointments.** The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender shall furnish a copy of this list to the members of the Court. The Federal Public Defender shall maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the ratio of appointments between the Federal Public Defender Organization and private attorneys. When practical and cost effective, attorneys from the CJA Panel shall be appointed in a substantial proportion of cases in which the person is deemed qualified for counsel pursuant the Act. "Substantial" shall be defined usually as approximately 25% of the appointments annually throughout the District.

(2) **Method of Selection.**

(a) Appointments from the list of private attorneys should be made on a rotational basis, subject to the presiding judge's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations.

This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

(b) Upon the determination of a need for the appointment of counsel, the presiding judge shall notify the Federal Public Defender of the need for counsel and the nature of the case. The presiding judge may determine that the appointment of more than one counsel is necessary in an extremely difficult, complex, or extended case. In the event the case is one in which the United States has or may seek the death penalty, the presiding judge shall determine the need for appointment of at least two counsel no later than the accused's first appearance.

(c) The Federal Public Defender shall advise the presiding judge as to the status of distribution of cases as between the Federal Public Defender Organization and the Panel of private attorneys. If the presiding judge decides to appoint an attorney from the Panel, the Federal Public Defender shall determine the name of the next Panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing District or Magistrate Judge.

(d) In the event an emergency arises on weekends, holidays, or other nonworking hours of the office of the Federal Public Defender, the presiding judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the presiding judge shall notify the Federal Public Defender as to the name of the attorney appointed and the date of appointment.

(F) Determination of Need for Counsel.

(1) Advice of Right, Financial Inquiry, Appointment Procedure.

(a) In every criminal case in which a person is entitled to representation as provided in the preamble of this Plan and appears without counsel, the presiding judge shall advise the person of the right to be represented by counsel and that counsel will be appointed

if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel in writing, the presiding judge, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the person's request for appointment of counsel as soon thereafter as is practicable. All statements made by a person in requesting counsel or during the inquiry into eligibility shall be either by affidavit sworn to before the presiding judge, a Court Clerk or Deputy Clerk, or a Notary Public, or under oath in open Court.

(b) In appointing counsel, the presiding judge shall select the Organization or an attorney from the Panel, except in extraordinary circumstances in which it becomes necessary to make another selection of a member of the Bar of this Court.

(c) The presiding judge shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

(2) Continuity and Duration of Appointment.

(a) A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States Magistrate or District Judge through appeal, including ancillary matters appropriate to the proceedings.

(b) If a United States Magistrate Judge appoints counsel to represent a person and the person is later before a District Judge in connection with the same charge, the same counsel shall appear to represent the person until the Judge makes an independent determination whether appointment of counsel is appropriate and, if so, who should be appointed.

(3) Appeal. In the event a criminal defendant enters a plea of guilty or is convicted following trial, appointed counsel shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. Counsel's duties under his appointment by the trial court

include: (a) arranging for timely transmission of the record on appeal as provided by Fed.R.App.P. Rules 10 and 11, and 10th Cir. Rules 10.1, 10.2 and 10.3; (b) filing a docketing statement in accordance with Tenth Circuit Rule 3.4; and, if requested, (c) filing a memorandum opposing summary disposition. Counsel's appointment remains in full force and effect until relieved of duty by order of the district court or the Court of Appeals.

(4) Partial Payment or Reimbursement.

(a) If at any time after appointment of counsel the presiding judge finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the presiding judge may terminate the appointment of counsel or authorize payment as provided in subsection (f) of the Act, as the interests of justice may dictate.

(b) If at any time after appointment counsel obtains information from a non-privileged source that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the representation, counsel shall advise the presiding judge. The presiding judge may permit assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. In such event, the amount so paid or payable by the party shall be considered by the presiding judge in determining the total compensation to be allowed to such attorney. No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the presiding judge.

(c) If at any stage of the proceedings, including an appeal, the presiding judge finds that the party is financially unable to pay retained counsel, the presiding judge may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

(d) The presiding judge, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

(5) Discretionary Representations.

(a) Any person in custody as a material witness, or seeking relief under §§ 2241, 2254, or 2255 of Title 28, or § 4245 of Title 18, United States Code, may be furnished representation pursuant to this Plan whenever the presiding judge determines the interests of justice so require and such person is financially unable to afford adequate representation. Such appointments are discretionary pursuant to subsection (g) of the Act, and payment for such representation shall be in accordance with the provisions of the Act and this Plan.

(6) Appointment of Counsel and Procedures in Federal Capital Prosecutions.

(a) Pursuant Title 18, United States Code, § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant Title 21, United States Code, § 848(q)(4), more than two attorneys may be appointed to represent a defendant in such a case, if necessary for adequate representation.

(b) For cases in which appointment of counsel occurs prior to judgment, at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that court. See Title 21, United States Code, § 848(q)(5). Further, at least one of the attorneys appointed must be knowledgeable in the law applicable to death penalty cases. In appointing counsel in federal capital prosecutions, the presiding judge shall consider the recommendation of the Federal Public Defender, or in the Defender's incapacity, the Administrative Office of the United States Courts. See Title 18, United States Code, § 3005.

(c) For cases in which the appointment of counsel occurs after judgment, at least one of the attorneys appointed must have been admitted to practice in the Court of Appeals for not less than five years, and must have had not less than three years' experience

in the handling of appeals in felony cases in that Court. See Title 21, United States Code, § 848(q)(6).

(d) The presiding judge, for good cause shown, may appoint an attorney who does not qualify under Title 21, United States Code, § 848(q)(5) or (6), but who has the background, knowledge, and experience necessary to represent the person properly in a capital case, giving due consideration to the seriousness of the possible penalty, and the unique and complex nature of the litigation.

(e) The Panel Selection Committee is directed to inquire of applicants to the regular CJA Panel and to survey members of the Capital Habeas Corpus Panel to determine the qualifications and willingness of Panel members to serve in federal capital prosecutions.

(G) **Investigative, Expert, and Other Services.**

(1) **Upon Request.**

(a) Counsel for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request such services in an *ex parte* application before the presiding judge. Upon finding, after appropriate inquiry in such *ex parte* proceedings, that the services are necessary, and that the person is financially unable to obtain them, the presiding judge shall authorize counsel to obtain the services.

(b) The maximum which may be paid to a person or organization for services so authorized shall not exceed \$1,000.00, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the presiding judge as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit, or the Chief Judge's designee.

(2) Without Prior Request.

(a) Counsel appointed under the Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for adequate representation. However, the total cost for services obtained without prior authorization may not exceed a maximum of \$300.00 and expenses reasonably incurred, for each person or organization providing the services. This \$300.00 limit may be waived, however, if the presiding judge finds, in the interests of justice, that timely procurement of necessary services could not await prior authorization. Counsel may request ratification for investigative, expert, or other services within the \$300.00 limit by submitting an application for *ex parte* review by the presiding judge.

(3) Ex Parte Applications.

(a) *Ex parte* applications for services other than counsel shall be heard *in camera*, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial court, subject to further order of the presiding judge.

(4) Claims.

(a) Claims for compensation of persons providing investigative, expert, and other services under the Act shall be submitted on the appropriate CJA form to the presiding judge. The Court Clerk, or the Clerk's designee, shall review the claim form for mathematical and technical accuracy and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim for the presiding judge's consideration.

(5) Federal Public Defender Organization.

(a) The Federal Public Defender Organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this section, provided that total expenditures of the Organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories.

(H) **Payment for Representation by Private Counsel.**

(1) **Hourly Rates.**

(a) Any private attorney appointed under this Plan shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not to exceed the hourly rate approved by the Judicial Conference of the United States and funded by Congress. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the presiding judge.

(2) **Maximum Amounts.**

(a) The compensation to be paid to a private attorney appointed under this Plan shall not exceed the maximum amounts prescribed in the Act for each attorney in a case in which one or more felonies are charged, for each attorney in a case in which only misdemeanors are charged, for representation in connection with a post-trial motion made after entry of judgment, a probation revocation proceeding, a parole proceeding, or for discretionary appointments as provided in subsection (a)(2) of the Act.

(3) **Waiving Maximum Amounts.**

(a) Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding judge certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit, or the Chief Judge's designee.

(4) **Death Penalty Representation**

(a) The hourly rates and maxima established for regular felony prosecutions are inapposite in cases involving the imposition of the death penalty. The hourly rates shall be set by the presiding judge commensurate with the current recommendations of the Judicial Conference of the United States. Claims shall be submitted on the forms provided by the Administrative Office of the United States Court for use in death penalty cases, at the intervals recommended by the Administrative Office.

(5) Filing Claims.

(a) Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Federal Public Defender. The Federal Public Defender shall review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim form for the consideration and action of the presiding judge.

(b) In cases in which representation is furnished other than before the Court, the presiding judge shall fix the compensation and reimbursement to be paid.

(c) Vouchers shall be submitted at the conclusion of each stage in the proceedings, in accordance with the CJA forms. The presiding judge may authorize periodic payments at intervals within the separate stages of the proceedings, on a schedule to be determined by the presiding judge.

(d) All vouchers shall be submitted within 45 days after the representation is concluded. Any voucher submitted more than 45 days after the case is concluded shall be accompanied by a letter demonstrating good cause for the delay. The voucher and any accompanying explanation will be submitted for the consideration of the presiding judge. Vouchers should receive disposition by the presiding judge within 30 days after submission.

(e) In cases in which the amount of compensation and reimbursement approved by the presiding judge is less than was requested by appointed counsel, the presiding judge should notify appointed counsel that the claim has been reduced, and provide an explanation for the reasons for the reduction.

(I) Procedures for Capital Habeas Cases

(1) Appointment of Counsel

(a) The Court shall consider requests for appointment of counsel promptly and counsel shall be appointed as soon as possible.

- (b) The Federal Public Defender Organization shall be authorized to serve as counsel of record, and shall recommend to the Court those cases in which its appointment as counsel of record is appropriate. The authority to accept appointments shall extend to cases in all three Federal districts within the State of Oklahoma.
- (c) If appointment of the Federal Public Defender Organization is not feasible, the Federal Public Defender shall provide to the Court the name of the next available member of the "Capital Habeas Corpus Panel." When the interests of justice require the appointment of more than one attorney, the Defender shall furnish the names of two attorneys.

(2) **Capital Habeas Panel**

- (a) The Capital Habeas Panel shall be composed of private attorneys specially qualified to serve in death penalty federal habeas corpus cases. Qualification to serve shall be based on counsel's experience in death penalty representation, complex civil litigation, complex appellate practice, or other, similar, experience.
- (b) The members of the Capital Habeas Panel shall be selected by a Capital Habeas Panel Selection Committee, which shall be composed of five members: one practicing attorney from each of the three federal districts, one attorney serving as member of the faculty of one of the State's accredited law schools, and one Death Penalty Law Clerk. The Federal Public Defender for the Western District of Oklahoma shall serve as a non-voting

member of the Committee and shall provide the names of attorneys willing to serve to the Chief Judges of the three federal districts. The members shall serve five year terms, staggered to ensure continuity of the majority of the Committee. The Death Penalty Law Clerk member shall rotate among the three districts, by consensus of the Chief Judges.

- (c) All qualified attorneys shall be encouraged to participate in the furnishing of representation in federal death penalty habeas corpus proceedings, without regard to race, color, religion, gender, age, national origin, or disabling condition.
- (d) The Federal Public Defender shall submit the applications of members of the private bar interested in serving on the Capital Habeas Panel to the Capital Habeas Panel Selection Committee. The Federal Public Defender shall forward the applications of the attorneys, with the Capital Habeas Panel Selection Committee's recommendations, to the Chief Judges of the three Districts. The Chief Judges shall advise the Federal Public Defender of the Judges' approval or disapproval of the applicants.
- (e) The Federal Public Defender shall submit an annual panel activity report to the Chief Judges, noting the number of appointments accepted by each attorney during the year, the number of pending cases maintained by the attorney, and the Capital Habeas Panel Selection Committee's efforts to increase diversity of the Panel's membership during the year.

(3) **Case Management**

- (a) The presiding judge or a United States Magistrate Judge shall, in a written order, direct counsel for the petitioner to submit a

budget estimating the time and resources necessary to prepare the petition. The resource requirements shall specify the nature and type of services counsel anticipate will be required to prepare the petition and estimate of costs associated with the services.

- (b) Counsel shall submit the proposed budget in writing.
- (c) The proposed budget will be reviewed by the presiding judge or the judge's designee at an ex parte litigation budget conference. Any revision to the budget shall be noted on the written budget.
- (d) The budget shall remain sealed during the pendency of the proceedings. For purposes of voucher auditing only, the dollar amounts approved in each expense category shall be disclosed to the Court Clerk and the Federal Public Defender.
- (e) In the event counsel determines the budget will be exceeded prior to the completion of the petition, counsel shall submit a written advisement to the presiding judge, advising the Court of the nature of the anticipated deficit. The presiding judge may approve expenses in excess of the initial budget, subject to the requirements of paragraph (4)(f).

(4) Claims for Services

- (a) Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Federal Public Defender. The Federal Public Defender shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures)

and, if correct, shall forward the claim form for the consideration and action of the presiding judge.

- (b) In cases in which representation is furnished other than before the Court, the presiding judge shall fix the compensation and reimbursement to be paid.
- (c) Vouchers shall be submitted at the conclusion of each stage in the proceedings, in accordance with the CJA forms. The presiding judge may authorize periodic payments at intervals within the separate stages of the proceedings, on a schedule to be determined by the presiding judge.
- (d) All vouchers shall be submitted within 45 days after the representation is concluded. Any voucher submitted more than 45 days after the case is concluded shall be accompanied by a letter demonstrating good cause for the delay. The voucher and any accompanying explanation will be submitted for the consideration of the judicial officer presiding over the case. Vouchers should receive disposition by the presiding judge within 30 days after submission.
- (e) In cases in which the amount of compensation and reimbursement approved by the presiding judge is less than was requested by appointed counsel, the presiding judge should notify appointed counsel that the claim has been reduced, and provide an explanation for the reasons for the reduction.
- (f) Attorney compensation in excess of \$100,000.00, exclusive of expenses, must be approved by the presiding judge and reviewed by the Chief Judge of the Tenth Circuit or the Chief Judge's designee.

(J) Miscellaneous.

(1) Forms.

(a) Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the Court, the Clerk, the Federal Public Defender Organization, and counsel.

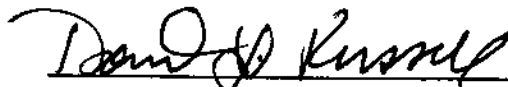
(2) Guidelines for the Administration of the Criminal Justice Act.

(a) The Court, Clerk of the Court, Federal Public Defender Organization, and private attorneys appointed under the Act and this Plan, shall comply with the provisions of the Judicial Conference's *Guidelines for the Administration of the Criminal Justice Act* (Volume VII, *Guide to the Judiciary Policies and Procedures*). *This order supersedes G.O. 00-1 dated February 29, 2000.*

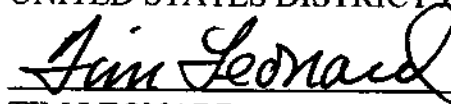
DATED this 14th day of June, 2002.



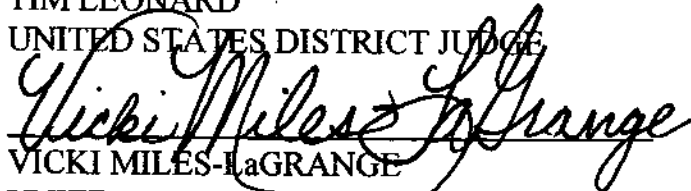
ROBIN J. CAUTHRON, CHIEF
UNITED STATES DISTRICT JUDGE



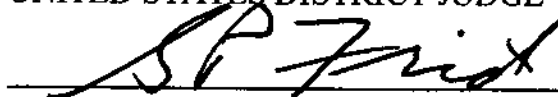
DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE



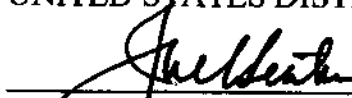
TIM LEONARD
UNITED STATES DISTRICT JUDGE



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE



JOE HEATON
UNITED STATES DISTRICT JUDGE